

**Appl. No.** : 10/658,093  
**Filed** : September 9, 2003

### **REMARKS**

According to the Examiner, the claims are divided into 27 groups. However, most of the groups are included as linked inventions. However, to clarify the restriction made by the Examiner, initially, the Examiner has divided the claims into the following elements:

A-a polynucleotide encoding a polypeptide, B – an RNA element that modulates the stability of a transcript, C- a site for introducing a nucleic acid element, D- a protein destabilizing element, E- a transcriptional control element, F-a post-transcriptional control element, G-a cis-acting regulatory element, H-a gene expression-modulating element, I-a test sequence suspected of containing a post-transcriptional control element, and J- a test sequence suspected of containing a cis-acting regulatory element. Using these, the Examiner has divided the claims as follows:

Group I consisting of Claims 23-58, 68, 70 and 85-92, drawn to a nucleic acid comprising the following combinations of elements AB, ABC, ABCE.

Group II consisting of Claims 23-58, 68, and 85-102, drawn to a nucleic acid comprising the following combinations of elements, AB, ABC, ABCD.

Group III consisting of Claims 67, 68 and 72, drawn to a nucleic acid comprising the following combinations of elements: AB, ABD, ABDE, classified in Class 435, subclass 320.1.

Group IV consisting of Claims 67, 68 and 93-102, drawn to a nucleic acid comprising the following combinations of elements: AB, ABD, ABCD, classified in Class 435, Subclass 320.1.

Group V consisting of Claims 68, 70 and 71, drawn to a nucleic acid comprising the following combinations of elements: AB, ABE, ABEG, classified in Class 435, Subclass 320.1.

Group VI consisting of Claims 68, 70 and 71, drawn to a nucleic acid comprising the following combinations of elements: AB, ABE, ABEJ, classified in Class 435, Subclass 320.1.

Group VII consisting of Claims 68, 71 and 72, drawn to a nucleic acid comprising the following combinations of elements: AB, ABE, ABDE, classified in Class 435, Subclass 320.1.

**Appl. No.** : 10/658,093  
**Filed** : September 9, 2003

Group VIII consisting of Claim 69, drawn to a nucleic acid comprising the following combinations of elements: AEF, classified in Class 435, Subclass 320.1.

Group IX consisting of Claim 69, drawn to a nucleic acid comprising the following combinations of elements: AIF, classified in Class 435, Subclass 320.1.

Group X consisting of Claim 69, drawn to a nucleic acid comprising the following combinations of elements: ACF, classified in Class 435, Subclass 320.1.

Group XI consisting of Claim 59, drawn to a genetically modified non-human organism comprising a construct according to Groups I or II, wherein said organism is an animal, classified in Class 800, Subclass 13.

Group XII consisting of Claim 59, drawn to a genetically modified non-human organism comprising a construct according to Groups I or II, wherein said organism is a plant, classified in Class 800, Subclass 295.

Group XIII consisting of Claims 1-22, 65, 73-81 and 83, drawn to a method of using a nucleic acid comprising the following combinations of elements: ABE, ABDE, classified in Class 435, Subclass 6.

Group XIV consisting of Claims 1-22, 66, and 73-84, drawn to a method of using a nucleic acid comprising the following combinations of elements: ABE, ABEJ, classified in Class 435, subclass 6.

Group XV consisting of Claims 60, 81-84 and 103-106, drawn to a method of using a nucleic acid comprising the following combinations of elements: ABH, ABDH, classified in Class 435, Subclass 6.

Group XVI consisting of Claims 61, 62 and 64, drawn to a method of using a nucleic acid comprising the following combinations of elements: AEF, ADEF, classified in Class 435, Subclass 6.

Group XVII consisting of Claim 63, drawn to a method of using a nucleic acid comprising the following combinations of elements: AEI, classified in Class 435, Subclass 6.

#### Linked Inventions

Groups I-VII are linked by the subcombination AB recited in Claim 68.

Groups I and II are linked by the subcombination ABC recited in Claim 23.

Groups III and IV are linked by the subcombination ABD recited in Claim 67.

Groups V, VI and VII are linked by the subcombination ABE recited in Claim 71.

Groups XIII and XIV are linked by the subcombination ABE recited in Claim 1.

Appl. No. : 10/658,093  
Filed : September 9, 2003

Further, the Examiner has required an election of species within either of Groups I or II to prosecution of either the RNA destabilizing element of claims 24, 42, 44, and 45 or the RNA destabilizing element of Claims 29 and 43. Thus, an election of either of Groups I or II must include an election of the RNA destabilizing element.

In response to this requirement, **Applicants elect to prosecute Group II, Claims 23-58, 68, and 85-102, drawn to a nucleic acid comprising the following combinations of elements, AB, ABC, ABCD with the RNA destabilizing element (element B) of claims 24, 42, 44 and 45 as the elected species.** This election is made without traverse.

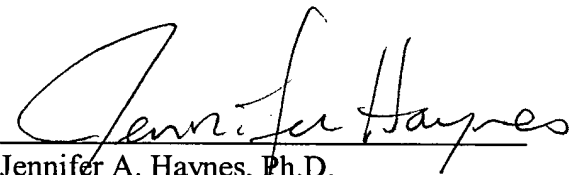
Upon allowance of linking Claim 23, examination of the claims of linked Group I is respectfully requested. Similarly, upon allowance of Claim 68, examination of the claims of all of Groups I and III-VII is respectfully requested.

A one-month extension of time is respectfully requested. A check in the amount of \$55 to cover the fee for the extension of time is included. Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: Aug. 18, 2004

By:   
Jennifer A. Haynes, Ph.D.  
Registration No. 48,368  
Agent of Record  
Customer No. 20,995  
(415) 954-4114